

JUN 23 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

FREDERICK SIMUNICH,

Plaintiff - Appellant,

v.

MARICOPA COUNTY BOARD OF
SUPERVISORS,

Defendant - Appellee.

No. 05-15795

D.C. No. CV-04-03011-PHX-JAT

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Submitted June 12, 2006 **

Before: WALLACE, KLEINFELD, and BERZON, Circuit Judges.

Frederick Simunich appeals pro se from the district court's judgment dismissing his action challenging a proposition that appeared on the ballot in an Arizona special election. We have jurisdiction under 28 U.S.C. § 1291. We

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review de novo, *Sunkist Growers, Inc. v. Fisher*, 104 F.3d 280, 284 (9th Cir. 1997) (dismissals based on res judicata); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003) (dismissals based on *Rooker-Feldman*), and we affirm.

The district court properly concluded that to the extent Simunich could have raised his claims in state court, these claims are precluded by res judicata. *See Olson v. Morris*, 188 F.3d 1083, 1086 (9th Cir. 1999) (“[Under Arizona law, the] doctrine [of res judicata] binds the same party standing in the same capacity in subsequent litigation on the same cause of action, not only upon facts actually litigated but also upon those points that might have been litigated.”). Moreover, to the extent Simunich’s complaint challenged the rulings of the Arizona state courts, the district court properly dismissed this action for lack of jurisdiction because it is a forbidden de facto appeal. *See Noel v. Hall*, 341 F.3d 1148, 1163-64 (9th Cir. 2003).

Simunich’s remaining contentions lack merit.

All pending motions and requests are denied.

AFFIRMED.